

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHELAN A. JACKSON,	§
	§ No. 479, 2004
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID Nos. VN02-10-1254-01
	§ VN02-10-1256-01
Plaintiff Below-	§
Appellee.	§

Submitted: January 27, 2006

Decided: March 8, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 8<sup>th</sup> day of March 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Phelan A. Jackson, filed an appeal from the Superior Court’s October 7, 2004 violation of probation (“VOP”) sentencing order. We affirm the Superior Court’s revocation of Jackson’s probation. However, because the Superior Court may have miscalculated Jackson’s VOP sentence, as is conceded by the State, we remand this matter to the Superior Court for further proceedings consistent herewith.

(2) In June 2003, Jackson pleaded guilty to drug possession and second-degree conspiracy. On the drug possession conviction, he was

sentenced to 3 years incarceration at Level V, to be suspended for time served for 18 months at Level III probation. On the conspiracy conviction, he was sentenced to 2 years incarceration at Level V, to be suspended for Level II probation.

(3) On October 7, 2004, a contested VOP hearing was held in the Superior Court. Jackson was represented by counsel. Georgiana Staley, an officer with Probation & Parole, testified that, on August 9, 2004, she was riding in a police car with Officer Phil Graham in the City of Wilmington and observed Jackson driving a pick-up truck with a woman and a young child seated on the passenger side of the front seat. Officer Staley was familiar with Jackson and knew that he had absconded from his Level II probation. In fact, Officer Staley had an administrative warrant for Jackson's arrest and a photograph of Jackson in her possession.

(4) As Officer Graham followed the pick-up truck through the city streets, Officer Staley radioed the Wilmington Police Department and asked for assistance in taking Jackson into custody. When the pick-up truck came to a stop and Jackson began to get out, Officer Staley opened the passenger door of the police vehicle and identified herself as a probation officer. Jackson got back into the pick-up truck, went into reverse, backed down the block and hit another vehicle. Officer Graham backed his police car down

the block in pursuit of Jackson. By this time, the Wilmington Police had arrived on the scene. Jackson put his truck in drive and hit Officer Graham's police car two times. He then hit a fire hydrant, where his truck became stuck. As Jackson ran away from his truck, Officer Graham subdued him and placed him under arrest.<sup>1</sup>

(5) On the basis of the evidence presented, the Superior Court found that Jackson had committed a VOP and sentenced him in connection with his drug possession conviction to 3 years Level V incarceration and in connection with his conspiracy conviction to 2 years Level V incarceration, to be suspended for 18 months Level IV Plummer Center.

(6) In this appeal, Jackson claims that: a) he did not receive proper notice of the VOP hearing so he could prepare his defense; b) there was insufficient evidence to support the finding of a VOP; c) he was entitled to a hearing before a jury; d) his original sentence for drug possession was illegal; and e) his VOP sentence in connection with his drug possession conviction, which included time already served, constituted a double jeopardy violation.

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<sup>1</sup>At the time of the VOP hearing, Jackson also had been indicted on charges of Attempted Assault in the Second Degree, Reckless Endangering in the Second Degree, Endangering the Welfare of a Child, and Resisting Arrest in connection with this incident.

(7) In VOP proceedings, the probationer is not afforded the full panoply of rights afforded an accused in a criminal trial. Among other things, the State need only prove by a preponderance of the evidence that a VOP occurred.<sup>2</sup> The rules of evidence are not applicable,<sup>3</sup> and there is no constitutional right to a jury.<sup>4</sup>

(8) Jackson's first three claims relate to the Superior Court's revocation of his probation. Those claims are without merit. First, the record reflects that Jackson's VOP hearing was scheduled a month in advance, providing Jackson's attorney with sufficient time to prepare a defense and secure the testimony of all necessary witnesses. Second, the undisputed testimony of Officer Staley was more than sufficient to support the finding of a VOP. Third, there is no constitutional right to a jury in a VOP proceeding.

(9) Jackson's final two claims relate to his sentence for drug possession. In June 2003, Jackson was sentenced on a drug possession conviction to 3 years of Level V incarceration, to be suspended for time served for 18 months of Level III probation. While Delaware law permits the Superior Court to impose the entire remaining balance of a suspended

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<sup>2</sup> *Weaver v. State*, 779 A.2d 254, 259 (Del. 2001).

<sup>3</sup> *Brown v. State*, 249 A.2d 269, 272 (Del. 1968).

<sup>4</sup> *Jenkins v. State*, Del. Supr., No. 133, 2004, Steele, C.J. (Nov. 23, 2004).

sentence when a VOP has been found,<sup>5</sup> an inmate is, nevertheless, entitled to credit to all time previously served at Level V.<sup>6</sup> According to the State, Jackson should be credited with time served between October 2002 and June 2003. It does not appear, however, that the Superior Court credited Jackson with that Level V time when it imposed its VOP sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court, insofar as it pertains to the revocation of Jackson's probation, is AFFIRMED. With respect to Jackson's claims regarding his sentence for drug possession, this matter is REMANDED to the Superior Court for reconsideration of its October 7, 2004 VOP sentencing order in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>5</sup> *Pavulak v. State*, 880 A.2d 1044, 1046 (Del. 2005).

<sup>6</sup> *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).